

1 BRUCE SCOTT DICKINSON, ESQ.  
Nevada Bar No. 002297  
2 MICHAEL HOTTMAN, ESQ.  
Nevada Bar No. 008501  
3 JACQUELYN M. FRANCO, ESQ.  
Nevada Bar No. 13484  
4 **STEPHENSON & DICKINSON, P.C.**  
5 2820 West Charleston Boulevard, Suite B-19  
Las Vegas, Nevada 89102  
6 Telephone: (702) 474-7229  
7 Facsimile: (702) 474-7237  
email: *admin@sdlawoffice.net*

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9 Attorneys for Defendants

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11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**  
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14 JOSEPH RAIOLA,

15 Plaintiff,

16 vs.

17 WERNER CO. dba NEW WERNER CO.;  
18 HOME DEPOT USA, INC. dba THE HOME  
19 DEPOT; DOES 1 through 20; DOE  
EMPLOYEES 1 through 20; DOE  
20 MANUFACTURERS 1 through 20; ROE  
CORPORATIONS 1 through 20.

21 Defendants.  
22

CASE NO.: 2:14-cv-01008-JCM-NJK

**STIPULATION AND ORDER TO EXTEND  
DISCOVERY (First Request)**

AS AMENDED,  
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23 IT IS HEREBY STIPULATED AND AGREED, by Defendants WERNER CO. and HOME DEPOT  
24 USA, INC.; and Plaintiff JOSEPH RAIOLA, by and through their undersigned counsel, that  
25 discovery be extended 45 days beyond the Discovery Schedule in the Discovery Plan dated  
26 September 3, 2014 (Document No. 14).

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1 This bodily injury case is the result of Plaintiff falling off a ladder. He is alleging the ladder  
2 was defective.

3 Per Federal Rules of Civil Procedure 16(b), and Local Rule 26-4 the following is included in  
4 support of the proposed 45 day extension to the Discovery Schedule:

5 **A. Local Rule 26-4(a) statement:**

6 Plaintiff has submitted and Defendants have responded to one set of interrogatories and one  
7 set of requests for production. Defendants have submitted and Plaintiff has responded to two sets of  
8 interrogatories and four sets of requests for production.

9 Plaintiff has produced his initial FRCP 26 disclosure and two supplements. Defendants have  
10 produced their initial FRCP 26 disclosure and five supplements.

11 Defendants have obtained and disclosed 631 pages of medical records. In addition,  
12 Defendants have disclosed 1,150 pages of non-medical records consisting of the Werner claim file,  
13 Werner ladder design documents, and OSHA. Standards.

14 Two inspections have been completed. One inspection of the subject ladder and an additional  
15 inspection of the accident scene located at Plaintiff's residence.

16 Plaintiff has disclosed his experts and produced their reports. Defendants have identified  
17 their non-retained ladder expert and produced two reports and videos he is relying upon. In addition,  
18 Defendants have identified their orthopedic expert.

19 Plaintiff's deposition has also been taken.

20 **B. Local Rule 26-4(b) statement:**

21 The discovery that needs to be completed is:

- 22 1) Defendants' FRCP 35 orthopedic examination of Plaintiff. He is currently scheduled to  
23 undergo an examination by John Herr, M.D. on June 8, 2015. The report should be  
24 completed 30 days later, on July 8, 2015.
- 25 2) Take the following depositions:
- 26 a) Plaintiff's spinal expert, Mark Kabins, M.D. (currently set for June 20, 2015);
- 27 b) Erik Johnson, P.E, Plaintiff's ladder expert; (currently set for June 24, 2015);
- 28 c) John Baldouf, M.D, Plaintiff's non-retained medical expert;

- d) Werner's non-retained ladder expert, Dale King, Senior Advanced Development Engineer for Werner; and
- e) Dr Herr.

**C. Local Rule 26-4(c) statement:**

Defendants are requesting this extension for two primary reasons:

- 1) Regarding Dr. Herr's FRCP 35 examination of Plaintiff, this examination was originally scheduled for May 14, 2015. However, Plaintiff had to go out of town that date and the examination was cancelled. It has been reset for June 8, 2015, the first date Dr. Herr is available. In addition, more time will be needed for Dr. Herr to complete his report and schedule his deposition.
- 2) Due to counsels' and experts' scheduling conflicts the remaining expert depositions cannot be completed before the end of discovery, which is currently set for June 23, 2015.

**D. Local Rule 26-4(d) statement:**

The parties stipulate to the following schedule to complete discovery:

- a) Discovery Cut-Off Dates. The last day to conduct Discovery shall be Friday, August 7, 2015;
- b) Federal Rules of Civil Procedure 26(a) Disclosures (Experts). The last day to disclose Dr. Herr's report shall be July Wednesday, July 8, 2015.
- c) Interim Status Report. The parties have already provided the Court with an interim status report on this case.
- d) Dispositive Motions. The parties shall have until Friday, September 4, 2015 to file any dispositive motions. This date does not exceed the outside limit of 30 days following the Discovery cut-off date that Local Rule 26-1(e)(4) presumptively sets for filing dispositive motions.
- e) Pre-trial Order. The pre-trial order shall be filed by Friday, October 2, 2015 which is not more than 30 days after the date set for filing dispositive motions. This deadline is

suspended if dispositive motions are timely filed. The disclosures required by Federal Rules of Civil Procedure 26(a)(3) shall be made in the joint pre-trial order.

Any additional request for an extension must be brought at least 21 days before the subject deadline.

See Local Rule 26-4.

~~Extensions or Modifications of the Discovery Plan and Scheduling Order~~ Any

~~additional stipulations or motions to extend discovery must be made no later than Friday, July 17, 2015, which is not later than 21 days before the discovery cut-off date and complying with Local Rule 26-4.~~

DATED this 1<sup>st</sup> day of June, 2015.

/s/ Michael Hottman

BRUCE SCOTT DICKINSON  
Nevada Bar No. 002297  
MICHAEL E. HOTTMAN, ESQ.  
Nevada Bar No.: 008501  
JACQUELYN M. FRANCO, ESQ.  
Nevada Bar No. 13484  
STEPHENSON & DICKINSON  
2820 W. Charleston Blvd., Suite 19  
Las Vegas, Nevada 89102  
P: 702-474-7229  
F: 702-474-7237  
E: [admin@sdlawoffice.net](mailto:admin@sdlawoffice.net)  
*Attorney for Defendants*

DATED this 1<sup>st</sup> day of June, 2015.

/s/ Paul A. Shpirt

TRACY A. EGLET, ESQ.  
Nevada Bar No.: 006419  
PAUL A. SHPIRT, ESQ.  
Nevada Bar No.: 010441  
EGLET LAW GROUP  
400 South 7<sup>th</sup> Street, Box 1, Suite 400  
Las Vegas, Nevada 89101  
P: 702-450-5400  
F: 702-450-5451  
E: [eservice@egletwall.com](mailto:eservice@egletwall.com)  
*Attorneys for Plaintiff*

### ORDER

**It is so ordered.**

DATED this 2nd day of June, 2015.

  
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U.S. MAGISTRATE JUDGE